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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736 and 746

[Docket No. 130627574-3574-01]

RIN 0694-AF94

Amendments to the Export Administration Regulations: Implementation of Limited Syria Waiver for Reconstruction Assistance

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement a limited waiver, published by the Secretary of State on June 12, 2013, of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (the SAA). The waiver authorizes BIS to issue licenses on a case-by-case basis for the export or reexport of certain commodities, software, and technology necessary for the support of the Syrian people. Specifically, consistent with Section 5(b) of the SAA, Executive Order 13338 of May 11, 2004 and the International Emergency Economic Powers Act (IEEPA), BIS implements the waiver by amending its Syria licensing policy under the EAR. BIS will review licenses on a case-by-case basis for the export or reexport of certain commodities, software, and technology, including, but not limited to, those related to water supply and sanitation, agricultural production and food processing, power generation, oil and gas production, construction and engineering, transportation, and educational infrastructure, as a means of helping to address the critical needs of the Syrian people and facilitating reconstruction. These exports are necessary to support a

political transition, restore stability, and counter destabilizing influences in the region, and are therefore essential to the national security of the United States.

DATES: This rule is effective [INSERT DATE OF PUBLICATION].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

In the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Pub. L. 108-175, codified as a note to 22 U.S.C. 2151) (the SAA), the United States addressed the Syrian government's support for terrorist groups, its military presence in Lebanon, its pursuit of weapons of mass destruction, and its actions to undermine U.S. and international efforts with respect to the stabilization and reconstruction of Iraq (Section 5(a) and (d)). Section 5(a)(1) of the SAA requires the President to prohibit the export to Syria of all items on the Commerce Control List (15 CFR Part 774). The SAA also requires the President to impose two or more of the six additional sanctions set forth in Section 5(a)(2)(A)-(F).

The President implemented those sanctions through Executive Order (EO) 13338 of May 11, 2004, which includes an additional sanction prohibiting the export to Syria of products of the United States other than food and medicine. However, the President exercised national security waiver authority pursuant to Section 5(b) of the SAA, which authorized certain transactions

under BIS license and delegated his authority to issue additional waivers to the Secretary of State.

In accordance with this EO, BIS implemented sanctions on Syria by issuing General Order No. 2 to Supplement No. 1 to Part 736 of the Export Administration Regulations (EAR). *See* 69 FR 26766 (May 14, 2004). In addition, BIS later made administrative changes to General Order No. 2 and § 746.9 of the EAR to facilitate compliance with the comprehensive U.S. sanctions on Syria. *See* 74 FR 77115 (Dec. 12, 2011).

On June 12, 2013, the Secretary of State exercised authority delegated to him by the President in Section 9 of EO 13338 to waive the application of specific sanctions imposed on Syria pursuant to the SAA. This rule implements the Secretary of State's waiver by amending General Order No. 2 and §746.9 of the EAR. Specifically, BIS revises the list of waivers in General Order No. 2 and the associated licensing policy in § 746.9 of the EAR to allow case-by-case review of applications for exports and reexports of items necessary for the support of the Syrian people. These exports are necessary to support a political transition, restore stability, and counter destabilizing influences in the region, and are therefore essential to the national security of the United States. The items may include, but are not limited to, commodities, software, and technology related to water supply and sanitation, agricultural production and food processing, power generation, oil and gas production, construction and engineering, transportation, and educational infrastructure.

Since August 21, 2001, the Export Administration Act (the Act) has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended most recently by the Notice of August 15, 2012, 77 FR 49699 (August

16, 2012), has continued the EAR in effect under the IEEPA. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to EO 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provisions of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the PRA. This collection has been approved by OMB under control number 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS-748. Total burden hours associated with the PRA and OMB control number 0694-0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to 5 U.S.C. 553(a)(1), the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). This rule implements the waiver of certain sanctions on Syria to authorize the exportation or reexportation of items necessary for the support of the Syrian people. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no Regulatory Flexibility analysis is required and none has been prepared. Notwithstanding these considerations, BIS welcomes public comments and will review them on a continuing basis.

List of Subjects

15 CFR Part 736

Exports

15 CFR Part 746

Exports, Reporting and recordkeeping requirements

Accordingly, parts 736 and 746 of the EAR (15 CFR parts 730 – 774) are amended as follows:

PART 736 – [AMENDED]

1. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

2. Supplement No. 1 to part 736, in paragraph (b), General Order No. 2 is amended by revising the last phrase in the third sentence and adding a phrase after it to read as follows:

Supplement No. 1 to Part 736 – General Orders

* * * * *

(b) * * *

General Order No. 2 * * * ; items in support of United Nations operations in Syria; and items necessary for the support of the Syrian people, including, but not limited to, items related to water supply and sanitation, agricultural production and food processing, power generation, oil and gas production, construction and engineering, transportation, and educational infrastructure.

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PART 746 – [AMENDED]

3. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007-7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

4. In § 746.9, paragraph (c)(2) is amended by revising the last phrase in the first sentence and adding a phrase after it to read as follows:

§ 746.9 Syria

* * * * *

(c) * * *

(2) * * * ; items in support of United Nations operations in Syria; and items necessary for the

support of the Syrian people, including, but not limited to, items related to water supply and sanitation, agricultural production and food processing, power generation, oil and gas production, construction and engineering, transportation, and educational infrastructure. * * *

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DATED: July 17, 2013

Kevin J. Wolf

Assistant Secretary for Export Administration

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